

JUDGE KAPLAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILE COPY

11 CIV 5883

THE LAW OFFICE OF THEODORE N. COX

Plaintiff,

v.

HILLARY CLINTON, Secretary of State,
United States Department of State,
BARACK OBAMA,
The President of the United States

Defendants.

Docket #:



COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

AND REQUEST FOR ATTORNEY FEES

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq., and the Administrative Procedures Act ("APA"), 5 U.S.C. § 701, *et seq.*, for a declaratory judgment, injunctive and other appropriate relief to obtain the timely and thorough response to Plaintiff's FOIA request which was filed on December 2, 2008 and FOIA appeal that has been pending since March 18, 2011. Plaintiff files this action seeking to obtain an adequate search of the documents requested and to obtain the disclosure of agency records improperly withheld by defendants, President Barack Obama and Secretary of State Hillary Clinton.

JURISDICTION AND VENUE

2. The Southern District Court of New York has both subject matter jurisdiction over this action and personal jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 552(a)(6)(C)(i). This Court also has original jurisdiction pursuant to 28 §§ 1331 and 1346.

3. Venue lies in the Southern District of New York pursuant to 5 U.S.C. § 552(a)(4)(B), 28 §§1391(e) and 1402(a) as the Plaintiff, The Law Office of Theodore N. Cox resides and has its principal place of business in this district located at 401 Broadway, Suite 701, New York, NY 10013.

PARTIES

4. Plaintiff, the Law Office of Theodore N. Cox is a New York County Law office specializing in immigration law and representing clients at immigration courts across the country. The Law Office of Theodore N. Cox has been representing clients seeking asylum in the United States and other relief from removal proceedings for the past twenty years.

5. Defendant, Hillary Rodham Clinton is the Secretary of State and is the President's chief foreign affairs adviser. The Secretary of State is responsible for the administration of the Department of State, including responding to requests under the Freedom of Information Act for Department of State records.

6. Defendant, President Barack Obama is the President of the United States and is responsible to "take care that the laws be faithfully executed" U.S. Constitution Art. 2, § 3.

STATUTORY FRAMEWORK

7. The Freedom of Information Act was enacted to encourage government transparency and public scrutiny of government action. The Freedom of Information Act allows members of the public at large to understand federal agency operations and to hold the government accountable. The Freedom of Information Act is the fulcrum of a vibrant and functioning democracy.

8. Any member of the public may make a request for records to an agency of the United States under the Freedom of Information Act.

9. The Freedom of Information Act implementing statute requires that an Agency receiving a FOIA request must respond in writing to the requestor within 20 business days after receipt of the request. 5 U.S.C. § 552(a)(6)(A)(I). The agency must respond with its intent to comply (or not comply) with the request, reasons for this determination, and whether the requestor has a right to appeal the determination. *Id.*

10. The Freedom of Information Act also requires an agency to make a reasonable search for responsive records. 5 U.S.C. § 552(a)(3)(c); *Zemansky v. Environmental Protection Agency*, 767 F.2d 569, 571(9th Cir. 1985).

11. The Freedom of Information Act mandates that federal agencies disclose all records in response to a request for records by a member of the public unless the records fall within a certain narrow set of statutory exceptions. 5 U.S.C. § 552(a)(4)(B).

12. There are very few exceptions which allow a federal agency to withhold information from a Freedom of Information Act requester. These exceptions are narrowly construed, and the burden is on the agency to show why non-compliance with a Freedom of Information Act request clearly falls under one of these exceptions. 5 U.S.C. § 552(a)(4)(B). “An Agency seeking to withhold information under an exemption to FOIA has the burden of proving that the information falls under the claimed exemption” *GC Micro Corp. V. Defense Logistics Agency*, 33 F.3d 1109, 1113 (9th Cir. 1994); *see also Lewis v. IRS*, 823 F.2d 375, 378 (9th Cir. 1987).

13. A Freedom of Information Act requestor who has been denied records may appeal the denial to the agency and the agency is required to make a “determination” on the merits of a Freedom of Information Act Appeal within 20 working days of receipt. 5 U.S.C. § 552(a)(6)(A)(ii)(“ Each agency, upon any request for records....shall determine within ten days twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore, and of the right of such person to appeal to the head of the agency any adverse determination”). *Id.* The agency must “immediately notify the person making such a request of the provisions for judicial review of that determination”. *Id.* An agency may extend this response deadline up to 10 working days in “unusual circumstances” but only can do so upon giving notice to requestor. *Id.*

14. The Freedom of Information Act also requires that any denial of a request list the “names and titles or positions of each person responsible for the denial.” 5 US.C. §552(a)(6)(c).

15. The Department of State implements the Freedom of Information Act under Title 22 of the Code of Federal Regulations (CFR), part 171.

16. A Freedom of Information Act Requestor is deemed to have exhausted all administrative remedies if the agency fails to comply with the statutory limits. 5 U.S.C. § 552(a)(6)(c)(i).

17. District Courts have jurisdiction to enjoin the agency from withholding agency records and to order the production of records that are subject to disclosure. 5 U.S.C. § 552(a)(4)(B). Courts must undertake their analysis of delayed Freedom of Information Act requests by “recognizing the enduring beliefs underlying freedom of information laws: that an informed public is desirable that access to information prevents governmental abuse and helps secure freedom, and that, ultimately, government must answer to its citizens.” *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 792 (3rd Cir. 2004).

18. A plaintiff may file a request for an order enjoining the agency from relying on an individual regulation or practice in all future FOIA undertakings. *Cf. McGehee v. CIA*, 697 F.2d 1095 (D.C. Cir. 1983).

19. A plaintiff can request a declaratory judgment stating that the agency’s actions are in violation of the Freedom of Information Act. 28 U.S.C. § 2201; 28 U.S.C. § 1361.

20. A plaintiff can recover reasonable attorney fees where the plaintiff has "substantially prevailed" on the merits of their Freedom of Information Act claim. 5 U.S.C. § 552(a)(4)(E). Plaintiffs can substantially prevail by adjudicating their claim for relief through a judicial order, an enforceable written agreement, consent decree or voluntary/unilateral change in position by the agency if the complainant's claim is not insubstantial. 5 U.S.C. § 552(a)(4)(E); *See* OPEN Government Act, § 4; *see, e.g., Hersh & Hersh v. HHS*, No. 06-4234, 2008 WL 2725497, at *2 (N.D. Cal. July 10, 2008).

21. If the agency's action are so flagrant, arbitrary and capricious, then the Court reviewing the action make a specific finding of that fact and refer the matter to the Merit System Protection Board for further investigation. 5 U.S.C. § 552(a)(4)(F). This will happen if the Court orders the production of agency records improperly withheld from Plaintiffs and finds that the "circumstances surrounding the withholding raises questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding". *Id.* The Special Counsel appointed" shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding". *Id.*

22. The burden is on the Defendant agency to sustain its action and the Defendant must serve an answer or otherwise plead to any complaint filed as a district court action within 30 days after service of the pleading unless the court otherwise directs for good cause shown. 5 U.S.C. § 552 (a)(4)(c).

BACKGROUND

23. Since 2008, federal appellate courts, the Board of Immigration Appeals and Executive Office immigration courts have denied asylum relief and reversed grants of asylum to Chinese asylum seekers in reliance on a report drafted and published by the Department of State, Bureau of Democracy Human Rights and Labor, titled *China: Profile of Asylum Claims and Country Conditions* (hereinafter “State Department Profile”). The most recent report from 2007 remains the most controversial and is cited in every single Chinese family planning-related case to date. See Department of State, Bureau of Democracy Human Rights and Labor, *China Country Report on Human Rights Practices—2007* (March 11, 2008), available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100518.htm>.

24. The subject of this litigation is the underlying Freedom of Information Act Request for the documents used and relied upon in producing the State Department Profiles for China which is crucial to evaluating the reliability and accurateness of the report itself.

FACTUAL ALLEGATIONS

A. Plaintiff's December 2, 2008 Request for Information (Attached Exhibit A)

25. Plaintiff made a request to the Department of State on December 2, 2008 pursuant to the Freedom of Information Act (“FOIA”), codified at 5 U.S.C. §552. Plaintiff's Freedom of Information Act submission was given control number 200807436. Plaintiff's Freedom of Information Act submission requested all records (as defined in 22 C.F.R. §171.11(e)) relied

upon by the Department of State to support each and every statement of fact, speculation, allegation, observation, and/or conclusion made in the following reports: the U.S. Dep't of State, Bureau of Democracy, Human Rights and Labor reports "*China: Profile of Asylum Claims and Country Conditions*" from 1998, 2004, 2005, 2006 and most importantly, 2007. The scope of the FOIA request focused on the sections of the Department of State profiles which relate to China's population control policy (also referred to as family planning policy) and specifically requested the following:

- A record containing the identity and country-specific credentials of all of the authors contributing to the *Profiles and Country Reports*;
- Any written or otherwise recorded attestation or affirmation by such contributing authors concerning the veracity, accuracy, objectivity, neutrality and/or the source of their statements of facts and/or opinions;
- All correspondence, notes, or reports regarding communication between United States government personnel and Chinese authorities cited in the China Profile (e.g., p. 30 of the *2007 Profile*: "National Population and Family Planning Commission officials told U.S. Embassy officials in July 2005 that, in accordance with an unpublished 2002 national-level "Regulation on Issues Concerning Births by Students when Overseas. . ." and "As to Fujian Province, in response to an inquiry by the U.S. Consulate General in Guangzhou. . .");
- All reports and field investigations cited by, or used in compiling the China Profile (see, e.g., p. 24 of the *2007 Profile*: "U.S. diplomats in China have heard reports that local officials occasionally employ illegal means. . .");
- Copies of all laws and regulations cited by the China Profile, in the original Chinese language, including the laws and regulations as appeared in Appendix A and Appendix B of the *2007 Profile*, as well as any documentation regarding the identity and qualifications of the translator(s) used by the Department of State;
- All correspondence, reports, and documentation associated with Appendix C of the *2007 Profile*, including the original (un-translated) letter from the Fujian Province Population and Family Planning Commission, and the initial inquiry from the U.S. government;
- A record of the names and credentials of the American diplomats who stated that they were unaware of "any cases in which returnees from the United States were forced to undergo sterilization procedures on their return" as reported in the *2005 Profile*;

- Records or documentation of any and all investigation team sent to China since 2000 for purposes of investigating China's family planning policy, e.g. an investigation team was sent to China in May 2002 under the direction of the former Secretary of State Colin Powell.

B. Department of State's September 27, 2010 Response (Attached Exhibit B)

26. The State Department's initial response was received September 27, 2010 which stated that eleven documents were responsive to Plaintiffs request for the documents used by the State Department Bureau of Democracy, Human Rights and Labor for drafting the Country Report profiles. Out of the eleven documents matching the search, one was released in full, four were released with excisions and one was withheld in full. The response stated that the remaining five documents required interagency coordination and that the one document withheld in full was withheld under exemption B5 (*Interagency or intra-agency communications forming part of the deliberative process, attorney-client privilege or attorney work-product*).

C. Department of State's December 17, 2010 Response (Attached Exhibit C)

27. The State Department's second response was received December 17, 2010 and resulted in the retrieval of fifteen additional documents which they released eleven in full and four with excisions which was further deemed as "responsive to our request".

D. Plaintiff's February 28, 2011 Amended Request (Attached Exhibit D)

28. On February 28, 2011, Plaintiff filed amended their initial Freedom of Information Act request in connection to the two Department of State's responses, seeking more documents from the unclassified material. The unclassified material request related to information concerning the investigation, findings, and correspondence regarding the three-member independent team sent

by the Secretary of State to China in May 2002 to investigate the allegations that United Nation's Population Fund ("UNFPA") China program participated in the coercive enforcement of birth limitation rules, including all records relied upon by the team to support the team's speculations, allegations, observations, and conclusions, that China's birth planning program had "coercive elements in law and practice."

29. In addition, the requested documents include all documents, records, and correspondence, regarding talks between UNFPA, United States government personnel, and the Chinese government personnel regarding revising China's birth limitation program to be in a manner consistent with Kemp-Kasten constraints, and any speculations, allegations, observations, and conclusions regarding whether or not UNFPA activities and China's birth limitation program is in fact consistent with Kemp-Kasten constraints. Specifically, the requested records include, but are not limited to, the following:

- Records containing the identity and credentials of the three member team sent to China in May 2002 to investigate the China's birth limitation program following allegations that coercive enforcement was used in its implementation;
- Any written or otherwise recorded attestation or affirmation by such contributing team members concerning the veracity, accuracy, objectivity, neutrality, and/or the source of their findings of facts and/or opinions;
- All reports and field investigations written, cited by, or used following the investigation and used in the team-members statements of facts or findings following the investigation, including, but not limited to, their conclusion that China's birth planning program had "coercive elements in law and practice,";
- All correspondence, notes, or reports regarding communication between United States government personnel and Chinese authorities regarding the United State's effort to get both parties to modify the program in a manner consistent with the Kemp-Kasten constraints;

- All other documents, reports, or records regarding China's birth limitation program and its implementation with regard to Kemp-Kasten restraints.

E. Plaintiffs March 18, 2011 Appeal (Attached Exhibit E)

30. On March 18, 2011, (within the 60-day appeal timeframe), Plaintiff appealed the two responses received from September and December of 2010 to the Chairman of Appeals Review Panel at the Department of State, case control no. 200807436. The basis of the appeal was that the documents produced did not provide information regarding specific findings in the China Country Profiles, and that Plaintiffs believe that additional records responsive to their initial request made were not located or not sent to them. In order to assist in the rapid recovery of these records, the amended appeal specifically cited to the findings in specific China Country Profiles for which the initial Freedom of Information Act response did not provide a factual basis for. The request requested the documentation and records that serve as a basis for these findings:

2005 China Country Profile:

- American diplomats in China are unaware of "any cases in which returnees from the United States were forced to undergo sterilization procedures on their return."

2006 China Country Profile:

- "[s]enior officials stated repeatedly that the Government 'made it a principle to ban coercion at any level' and the SFPC [State Family Planning Commission] has issued circulars nationwide prohibiting birth planning officials from coercing women to undergo abortions or sterilization against their will."
- Physical coercion is specifically condemned.

2007 China Country Profile:

- "In 2003, officials in one province who tried to force a woman to be sterilized were reprimanded after she complained to national family planning officials and insisted on

her right under the law to choose her method of birth control. She subsequent chose an IUD.”

- “The U.S. Embassy and Consulates General are unaware of any so-called “abortion certificates,”.
- “According to the Fujian Provincial Birth Planning Committee (FPBPC), there have been no cases of forced abortion or sterilization in Fujian Province in the last 10 years...
- The FPBPC acknowledges that during the 1980s and early 1990s there were isolated cases of forced abortion and sterilization. Since that time, the FPBPC asserts that it has insisted that all men and women who undergo surgical procedures provide informed, written consent before surgery.
- Local physicians in contact with the U.S. Consulate General in Guangzhou report that they have not seen signs of forced abortions or sterilizations among their patients from Fujian and Guangdong Provinces since the 1980s.”
- “... a hospital director in Changle, Fujian, stated that the hospital would take “measures” (unspecified) to induce some patients to undergo abortions in the name of compliance with the birth planning law. Consulate General officials visiting Fujian have found that coercion through public and other pressure has been used, but they did not find any cases of physical force employed in connection with abortion or sterilization. In interviews with visa applicants from Fujian, representing a wide cross-section of society. Consular General officers have found that many violators of the one-child policy paid fines but found no evidence of forced abortion or property confiscation.”
- Enforcement efforts in Fujian Province of family planning policies is “uneven.”

F. No Reply from the Department of State

31. Plaintiff’s appeal of their Freedom of Information Act request to the State Department remains without reply within the mandatory 20 days and without any further information from the Chairman of Appeals Review Board.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

32. Plaintiff is deemed to have exhausted all administrative remedies because the State Department clearly failed to comply with the statutory limits for its responses to Plaintiffs Freedom of Information Act requests and appeal. 5 U.S.C. § 552(a)(6)(c)(i).

DEFENDANTS VIOLATION OF THE FREEDOM OF INFORMATION ACT

FIRST CAUSE OF ACTION
DEFENDANTS VIOLATED THE FREEDOM OF INFORMATION ACT BY FAILING TO
CONDUCT AN ADEQUATE SEARCH OF RECORDS IN RESPONSE TO PLAINTIFF'S
REQUEST

33. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1-32 above inclusive.

34. Plaintiff's Freedom of Information Act request provided explicitly detailed information regarding a few distinct reports authored by the Defendant, the Department of State. Plaintiff has a legal right under the Freedom of Information Act to enforce the Defendants' obligation to make reasonable efforts to search for documents that are responsive to Plaintiff's requests and there exists not basis for Defendants' failure to make such reasonable efforts.

35. By failing to conduct an adequate search of all the records pertaining to the specific request that Plaintiff detailed and set out in their initial Freedom of Information Act request, subsequent Freedom of Information Act requests and appeal, the State Department has violated

Plaintiff's right to the Defendants' records under 5 U.S.C. § 552(a)(3)(C) and corresponding agency regulations.

36. Plaintiff has exhausted all applicable administrative remedies with respect to Defendants' wrongful failure to adequately search for Plaintiff's requested records. 5 U.S.C. § 552(a)(6)(C)(i).

SECOND CAUSE OF ACTION
DEFENDANTS VIOLATED THE FREEDOM OF INFORMATION ACT BY FAILING TO
RESPOND TO PLAINTIFF'S REQUEST IN A TIMELY MANNER

37. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1-326 above inclusive.

38. Plaintiff submitted the initial Freedom of Information Act request on December of 2008. The State Department's first response was on September 27, 2010 and their second response was on December 17, 2010. Plaintiff submitted an amended request on February 28, 2011 narrowly defining which specific statements from the report it sought to obtain the support documents for. Plaintiff further appealed the State Department's response to their Freedom of Information Act request on March 18, 2011.

39. Defendant, the Department of State has not responded to Plaintiff's Freedom of Information Act request as of August 2011 for over five months. Meanwhile, thousands of Chinese asylum seekers fleeing forcible family planning practices are deported back to China under the U.S. Government's conviction that their claims are moot.

40. Furthermore, under 5 U.S.C. § 552(a)(6)(E), certain Freedom of Information Act requests can be marked for expedited processing if the failure to obtain information in a timely manner would pose a significant harm. One of the categories of requesters entitled to this special processing includes requests made by a person primarily engaged in the dissemination of information to the public, and involving compelling urgency to inform the public.

41. Plaintiff's Freedom of Information Act request warranted expedited processing because the requested information directly impacts the lives of thousands of asylum-seekers in the United States and could significantly reduce the harm to them. 2 C.F.R. §171.12(b). The evidence requested in the Freedom of Information Act goes directly to precedent decision and directly impacts asylum claims of this nature. Therefore, the present Freedom of Information Act request should have been processed expeditiously.

42. Plaintiff has exhausted all applicable administrative remedies with respect to Defendants' untimely compliance with Plaintiffs FOIA request and appeal. 5 U.S.C. § 552(a)(6)(C)(i).

THIRD CAUSE OF ACTION
DEFENDANTS VIOLATED THE FREEDOM OF INFORMATION ACT BY WRONGFULLY
WITHHOLDING AGENCY RECORDS AND BY FAILING TO DISCLOSE AND RELEASE
RECORDS RESPONSIVE TO PLAINTIFF'S REQUEST

43. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1-32 above inclusive.

44. The State Department's failure to make its records available to the public violates 5 U.S.C. § 552(a)(1)-(2). Plaintiff has a legal right under the Freedom of Information Act to obtain the agency records they requested from the State Department and its sub agency, the Bureau of Democracy, Human Rights and Labor and there exists no basis for the State Department's failure to make available such records. Furthermore, there exists no basis for the State Department's failure to make available all of the records responsive to the Plaintiff's detailed requests and there exists no basis for the redactions and withholding of documents from that production.

45. Defendants' withholding of agency records sought by Plaintiff's request violates the Freedom of Information Act, 5 U.S.C. §§ 552(a)(3)(A) and (a)(6)(A) and applicable regulations promulgated there under.

46. Plaintiff has exhausted all applicable administrative remedies with respect to Defendants' wrongful withholding of the requested records. 5 U.S.C. § 552(a)(6)(C)(i).

47. Plaintiff is entitled to injunctive relief with respect to the release and disclosure of the requested documents. 5 U.S.C. § 5(a)(4)(B).

FOURTH CAUSE OF ACTION

DEFENDANT VIOLATED THE FREEDOM OF INFORMATION ACT BY FAILING TO MAKE A DETERMINATION ON THE MERITS OF PLAINTIFF'S FOIA APPEAL

48. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1-32 above inclusive

49. Defendants failed to respond to Plaintiff's Freedom of Information Act appeal filed on March 18, 2011.

50. Defendants failed to make a determination on the merits of the Freedom of Information Act Appeal within 20 days from the receipt of the March 18, 2011 appeal in accordance with 5 U.S.C. 5 U.S.C. § 552(a)(6)(A)(ii).

51. Defendants failed to demonstrate unusual circumstances or to provide notice to Plaintiffs about their response to Plaintiff's appeal in accordance with 5 U.S.C. § 552(a)(6)(C).

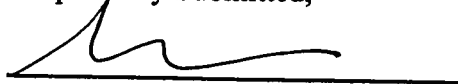
52. Defendants failed to provide the Plaintiff with a list of the names and titles or positions of each person responsible for the denial of the appeal in accordance with 5 U.S.C. § 552(a)(6)(c).

WHEREFORE, Plaintiffs request that this Court award them the following relief:

1. Declaratory Judgment that Defendants' actions are in violation of the Freedom of Information Act;
2. Order Defendants to conduct a reasonable search for all responsive records;
3. Order Defendants to promptly disclose the requested records in their entirety, and make copies available to Plaintiff;
4. Provide for expeditious proceedings in this action pursuant to 28 U.S.C. § 1657;
5. Enjoin the Defendants from relying on invalid practices for all future Freedom of Information Act requests;
6. Award Plaintiffs their reasonable litigation costs and attorney's fees;
7. Refer the matter of Defendants' non-compliance with FOIA requests to the Merit System Protection Board to appoint Special Counsel to investigate pursuant to 5 U.S.C. § 552(a)(4)(F).
8. Grant such other relief as the Court may deem just and proper.

DATED: August 22, 2011

Respectfully Submitted,



Theodore N. Cox

The Law Office of Theodore N. Cox

401 Broadway, Suit 701

New York, NY 10013

EXHIBIT LIST

A) Plaintiff's Freedom of Information Act Request Submitted December 2, 2008.....	20
B) Department of State Response to Plaintiff's Freedom of Information Act Request, Dated September 27, 2010.....	25
C) Department of State Second Response to Plaintiff's Freedom of Information Act Request Dated December 17, 2010.....	27
D) Plaintiff's Amended Freedom of Information Act Request Submitted February 28, 2011.....	29
E) Plaintiff's Freedom of Information Act Appeal Submitted March 18, 2011.....	49

LAW OFFICE OF THEODORE N. COX, ESQ.

*Attorneys-at-law
401 Broadway, Suite 701
New York, New York 10013*

Telephone: (212) 925-1208
Facsimile: (212) 925-5188
E-mail: tedcoxecf@gmail.com

December 1, 2008

Office of Information Program and Services
A/ISS/IPS
Department of State, SA-2
Washington, DC 20522-8001

**Re: Freedom of Information Act Request
Expedited Processing and Fee Waiver/Reduction Requested**

Dear Officer:

This request is made pursuant to the Freedom of Information Act ("FOIA"), codified at 5 U.S.C. §552. The FOIA statute "calls for broad disclosure of Government records." *U.S. Dep't of Justice v. Julian*, 486 U.S. 1, 8 (1988) (internal quotation marks omitted). The Department of State implements the FOIA statute in Title 22 Code of Federal Regulations (CFR), part 171.

Identification of Documents

The requested documents include all records (as defined in 22 C.F.R. §171.11(e)) relied upon by the Department of State to support each and every statement of fact, speculation, allegation, observation, and/or conclusion made in the following reports:

- 1) Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *China: Profile of Asylum Claims and Country Conditions* (Apr. 1998) (hereinafter "1998 Profile").

- 2) Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *China: Profile of Asylum Claims and Country Conditions* (Jun. 2004) (hereinafter "2004 Profile").
- 3) Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *China: Profile of Asylum Claims and Country Conditions* (Oct. 2005) (hereinafter "2005 Profile").
- 4) Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *China: Profile of Asylum Claims and Country Conditions* (May 2007) (hereinafter "2007 Profile").
- 5) Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, *China Country Reports on Human Rights Practices – 2006* (Mar. 2007) (hereinafter "2006 Country Reports").

Please note that the present request concerns the records that the Department of State used in preparing the above *Profiles* and *Country Reports*; it is NOT a request of the *Profiles* and *Country Reports* themselves.

Scope of Request

The present request focuses on the sections of the *Profiles* and *Country Reports* relating to China's population control policy (also referred to as family planning policy). Specifically, the requested records include, but are not limited to, the following:

- A record containing the identity and country-specific credentials of all of the authors contributing to the *Profiles* and *Country Reports*;
- Any written or otherwise recorded attestation or affirmation by such contributing authors concerning the veracity, accuracy, objectivity, neutrality and/or the source of their statements of facts and/or opinions;

- All correspondence, notes, or reports regarding communication between United States government personnel and Chinese authorities cited in the China Profile (e.g., p. 30 of the *2007 Profile*: “National Population and Family Planning Commission officials told U.S. Embassy officials in July 2005 that, in accordance with an unpublished 2002 national-level “Regulation on Issues Concerning Births by Students when Overseas. . .” and “As to Fujian Province, in response to an inquiry by the U.S. Consulate General in Guangzhou. . .”);
- All reports and field investigations cited by, or used in compiling the China Profile (see, e.g., p. 24 of the *2007 Profile*: “U.S. diplomats in China have heard reports that local officials occasionally employ illegal means. . .”);
- Copies of all laws and regulations cited by the China Profile, in the original Chinese language, including the laws and regulations as appeared in Appendix A and Appendix B of the *2007 Profile*, as well as any documentation regarding the identity and qualifications of the translator(s) used by the Department of State;
- All correspondence, reports, and documentation associated with Appendix C of the *2007 Profile*, including the original (untranslated) letter from the Fujian Province Population and Family Planning Commission, and the initial inquiry from the U.S. government;
- A record of the names and credentials of the American diplomats who stated that they were unaware of “any cases in which returnees from the United States were forced to undergo sterilization procedures on their return” as reported in the *2005 Profile*;
- Records or documentation of any and all investigation team sent to China since 2000 for purposes of investigating China’s family planning policy, e.g. an investigation team was sent to China in May 2002 under the direction of the former Secretary of State Colin Powell.

Expedited Processing Request

Expedited processing is warranted because the requested information is needed urgently. 22 C.F.R. §171.12(b). Requested information directly pertains to published decisions issued by the Board of Immigration Appeals (“BIA”), including but not limited to *Matter of J-W-S-*, 24 I&N Dec. 185 (BIA 2007), in which the BIA denied asylum claims filed by Chinese asylum applicants who have a genuine fear of persecution by the Chinese government. Because of this line of administrative decisions, a large class of

asylum seekers is facing imminent danger of being removed to a country in which they fear persecution. Therefore, the present FOIA request should be processed expeditiously. In any event, the FOIA request should be processed within 20 days. 8 C.F.R. §171.12(d).

Fee Waiver/Reduction Request

It is further requested that any fees be waived or reduced “because [the requested documents are] likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.” 22 C.F.R. §171.17(a). As stated above, the requested documents will shed light on the accuracy of the statements made in the Department of State’s country reports and asylum profiles, which directly affects a large class of asylum seekers facing imminent removal. In the event that said fee waiver/reduction request is not granted, requester is willing to pay any applicable fees. 22 C.F.R. §171.14.

Format Requested

Whenever feasible, it is requested that the documents be provided in CD-ROM format. 22 C.F.R. §171.12(f) (“The Department shall provide requested records in any form or format sought by the requester if the record is readily reproducible in that form or format through reasonable efforts.”).

Sincerely yours,

Theodore N. Cox



United States Department of State

Washington, D.C. 20520

SEP 27 2008

Case No.: 200807436

Segment: DRL001

Mr. Theodore Cox, Esq.
401 Broadway, Suite 701
New York, New York 10013

Dear Mr. Cox:

In response to your request dated December 2, 2008, under the Freedom of Information Act (Title 5 USC Section 552), we initiated searches of the following Department of State record systems: the Central Foreign Policy Records and the Bureau of Democracy, Human Rights and Labor.

The search of the Bureau of Democracy, Human Rights and Labor has been completed, and has resulted in the retrieval of eleven documents responsive to your request. After reviewing these documents, we have determined that one may be released in full, four may be released with excisions, and one must be withheld in full. All released material is enclosed.

A decision on the remaining five documents requires interagency coordination: all five originated in another government office, which will review the documents and respond to you directly.

An enclosure provides information on Freedom of Information Act exemptions and other grounds for withholding material. Where we have made excisions, the applicable exemptions are marked on each document. The one document withheld in full was withheld under exemption B5.

In some cases, two or more exemptions may apply to the same document. In the case of a document released in part, all non-exempt material that is reasonably segregable from the exempt material has been released.

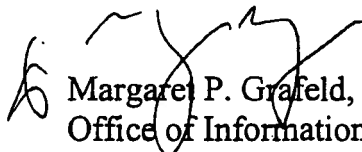
- 2 -

With respect to material withheld by the Department of State, you have the right to appeal our determination within 60 days. A copy of the appeals procedures is enclosed.

Still in progress is the search of the Central Foreign Policy Records. Additional information will be provided as it becomes available.

If you have any questions, you may write to the Office of Information Programs and Services, SA-2, Department of State, Washington, DC 20522-8100, or telephone us at (202) 261-8484. Please be sure to refer to the case number shown above in all correspondence about this case.

Sincerely,


Margaret P. Grafeld, Director
Office of Information Programs and Services

Enclosures:
As stated



United States Department of State

Washington, D.C. 20520

DEC 17 2010

Case No.: 200807436

Segments ER1 & ER2

Theodore Cox, Esq.
Suite 701
401 Broadway
New York City, New York 10013

Dear Mr. Cox:

I refer to our letter dated September 27, 2010, regarding the release of certain Department of State material under the Freedom of Information Act (Title 5 USC Section 552).

The search of the Central Foreign Policy records of the Department of State has been completed and has resulted in the retrieval of 15 additional documents responsive to your request. After reviewing these documents, we have determined that 11 may be released in full, and four may be released with excisions.

An enclosure provides information on Freedom of Information Act exemptions and other grounds for withholding material. Where we have made excisions, the applicable exemptions are marked on each document.

In some cases, two or more exemptions may apply to the same document. In the case of a document released in part, all non-exempt material that is reasonably segregable from the exempt material has been released.

With respect to material withheld by the Department of State, you have the right to appeal our determination within 60 days. A copy of the appeals procedures is enclosed.


- 2 -

The Freedom of Information Act provides for the recovery of the direct costs of searching for and duplicating records requested for non-commercial use. However, no fee is charged if the cost of collecting and processing the fee exceeds the amount of the fee. Since billable costs in this case do not exceed that amount, your request has been processed without charge to you.

We have now completed the processing of your case. If you have any questions, you may write to the Office of Information Programs and Services, SA-2, Department of State, Washington, DC 20522-8100, or telephone us at (202) 261-8484. Please be sure to refer to the case number shown above in all correspondence about this case.

We hope that the Department has been of service to you in this matter.

Sincerely,


for Alex Galovich
Co-Director, Acting
Office of Information Programs and Services

Enclosures:
As stated.

LAW OFFICE OF THEODORE N. COX, ESQ.

Attorneys-at-law
401 Broadway, Suite 701
New York, NY 10013
Tel.: (212) 925-1208
Fax: (212) 624-0232
tedcoxecf@gmail.com

February 28, 2011

Office of Information Program and Services
A/ISS/IPS
Department of State, SA-2
Washington, DC 20522-8001

RE: **Freedom of Information Act Request**
Expedited Processing and Fee Waiver/Reduction Requested
Case Control No. 200807436

Our File No. 10-190-1

Dear Officer:

This request is made pursuant to the Freedom of Information Act ("FOIA"), codified at 5 U.S.C. §552, and is connected with a previous FOIA request, case control number 200807436. The FOIA statute "calls for broad disclosure of Government records." *U.S. Dep't of Justice v. Julian*, 486 U.S. 1, 8 (1988) (internal quotation marks omitted). The Department of State implements the FOIA statute under Title 22 Code of Federal Regulations ("C.F.R."), part 171.

Identification of Documents

The requested documents include all records (as defined in 22 C.F.R. §171.11(e)) of the investigation, findings, and correspondence regarding the three-member independent team sent by the Secretary of State to China in May 2002 to investigate the allegations that United Nation's Population Fund ("UNFPA") China program participated in the coercive enforcement of birth limitation rules, including all records relied upon by

the team to support the team's speculations, allegations, observations, and conclusions, that China's birth planning program had "coercive elements in law and practice."

In addition, the requested documents include all documents, records, and correspondence, regarding talks between UNFPA, United States government personnel, and the Chinese government personnel regarding revising China's birth limitation program to be in a manner consistent with Kemp-Kasten constraints¹, and any speculations, allegations, observations, and conclusions regarding whether or not UNFPA activities and China's birth limitation program is in fact consistent with Kemp-Kasten constraints.

The existence of the three member team's investigation and the talks between the UNFPA, United States government personnel, and the Chinese government on the modification of the birth limitation program was found in unclassified material provided to requester in a previous FOIA, and is attached hereto.

Scope of Request

The present request focuses on statements, findings, reports, and documentation regarding the birth limitation program in China. Specifically, the requested records include, but are not limited to, the following:

- Records containing the identity and credentials of the three member team sent to China in May 2002 to investigate the China's birth limitation program following allegations that coercive enforcement was used in its implementation;

¹ The Kemp-Kasten Amendment has been enacted annually in Foreign Operations appropriation bills since 1985 through 2008, in reaction to allegations that the United Nations Population Fund supported China's population control program. The Amendment prohibits U.S. funding from going to any organization, such as the United Nations Population Fund, that supports or participates in the management of a program of coercive abortion or involuntary sterilization.

- Any written or otherwise recorded attestation or affirmation by such contributing team members concerning the veracity, accuracy, objectivity, neutrality, and/or the source of their findings of facts and/or opinions;
- All reports and field investigations written, cited by, or used following the investigation and used in the team-members statements of facts or findings following the investigation, including, but not limited to, their conclusion that China's birth planning program had "coercive elements in law and practice,";
- All correspondence, notes, or reports regarding communication between United States government personnel and Chinese authorities regarding the United State's effort to get both parties to modify the program in a manner consistent with the Kemp-Kasten constraints;
- All other documents, reports, or records regarding China's birth limitation program and its implementation with regard to Kemp-Kasten restraints.

Expedited Processing Request

Expedited processing is warranted because the requested information is needed urgently. 22 C.F.R. §171.12(b). Requested information directly pertains to published decisions issued by the Board of Immigration Appeals ("BIA"), including but not limited to *Matter of J-W-S-*, 24 I&N Dec. 185 (BIA 2007), in which the BIA denied an asylum claim filed by a Chinese asylum applicant who have a genuine fear of persecution by the Chinese government, on the ground that there was not evidence of coercive enforcement of the birth limitation program in China. This evidence goes directly to this claim. Because of this line of administrative decisions, a large class of asylum seekers are facing imminent danger of being removed to a country in which they fear persecution. A FOIA responses to a previous FOIA request, see attached, noted the existence of evidence that goes directly to these claims. Therefore, the present FOIA request should be processed expeditiously. In any event, the FOIA request should be processed within 20 days. 8 C.F.R. §171.12(d).

Fee Waiver/Reduction Request

It is further requested that any fees be waived or reduced "because [the requested documents are] likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester." 22 C.F.R. §171.17(a). As stated above, the requested documents will shed light on the accuracy of the statements made in the Department of State's country reports and asylum profiles, which directly affects a large class of asylum seekers facing imminent removal. In the event that said fee waiver/reduction request is not granted, requester is willing to pay any applicable fees. 22 C.F.R. §171.14.

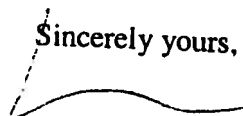
Format Requested

Whenever feasible, it is requested that the documents be provided in CD-ROM format. 22 C.F.R. §171.12(f) ("The Department shall provide requested records in any form or format sought by requester if the record is readily reproducible in that form or format through reasonable efforts.").

Reference to Our File No.

We request that the cover letter, and any further correspondence, reference our file number, 10-190-1.

Sincerely yours,


Theodore N. Cox

UNCLASSIFIED

C15

CONFIDENTIAL

PTO2011

RELEASED IN FULL

PAGE 01
ORIGIN IO-00

STATE 262313 200448Z

INFO	LOG-00	NP-00	AF-00	AID-00	CIAE-00	INL-00	USNW-00
	DODE-00	WHA-00	SRPP-00	DS-00	EAP-00	EUR-00	FBIE-00
	VC-00	TEDE-00	INR-00	LAB-01	L-00	VCE-00	M-00
	NSAE-00	OES-00	OIC-02	CAEX-01	IRM-00	SS-00	EPAE-00
	DSCC-00	PRM-00	DRL-02	NFAT-00	SAS-00	/006R	

262313

SOURCE: KODAKA.020043

DRAFTED BY: IO/EDA:SWHITTEMORE:SW -- 12/19/02 202-647-3975

APPROVED BY: IO:RTMILLER

IO/EDA:SWINNICK PRM:KRYAN L/HHR:NSCHOU

L/PM:PCLAYMAN EAP/CM:DATKINSON AF/E:GCOLVIN

WHA/CEN:ARODRIGUES WHA/AND:RMILES AF/C:PBELLAMY

WHA/CEN:EMAKENS EUR/WE:MADLER(INFO)

EAP/PIMBS:ADICKEY

USUN/W:RDICARLO

EUR/UBI:RDUNHAM

WHA/CEN:DTITUS

-----1A9F83 200451Z /38

O R 200442Z DEC 02

FM SECSTATE WASHDC

TO USMISSION USUN NEW YORK IMMEDIATE

AMEMBASSY DJIBOUTI IMMEDIATE

AMEMBASSY SAN SALVADOR IMMEDIATE

AMEMBASSY LIMA IMMEDIATE

AMEMBASSY LIBREVILLE IMMEDIATE

AMEMBASSY MADRID IMMEDIATE

AMEMBASSY MANILA IMMEDIATE

AMEMBASSY TEGUCIGALPA IMMEDIATE

CONFIDENTIAL

PAGE 02 STATE 262313 200448Z

AMEMBASSY LONDON IMMEDIATE

INFO IO COLLECTIVE

AMEMBASSY BEIJING

C O N F I D E N T I A L STATE 262313

E.O. 12958: DECL: 12/03/07

TAGS: AORC, EAID, PHUM, PREL, CH, UNFPA

SUBJECT: DEMARCHE REQUEST: UNFPA CHINA PROGRAM

REF: BEIJING 11787

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: CLARKE N ELLIS
DATE/CASE ID: 22 NOV 2010 200807436

UNCLASSIFIED

CLASSIFIED BY IO DAS R. TERRELL MILLER FOR REASONS
1.5 (B) (D)

UNCLASSIFIED

1. (U) THIS IS AN ACTION REQUEST. PLEASE SEE PARAS 10-17.

2. (C) SUMMARY: DEPARTMENT REQUESTS THAT USUN NEW YORK AND ADDRESSEE POSTS DEMARCHE, AT AN APPROPRIATE SENIOR LEVEL, PERMANENT REPRESENTATIVES AND FOREIGN MINISTRY OFFICIALS OF UNDP/UNFPA EXECUTIVE BOARD MEMBER COUNTRIES, IDENTIFIED BELOW. OUR GOAL IS TO CONVINCE THEM TO NOTIFY THE UN POPULATION FUND (UNFPA) SECRETARIAT THAT THEY WISH TO DISCUSS UNFPA'S PROPOSED FIFTH COUNTRY PROGRAM (CP) FOR CHINA (2003-2005) AT THE JANUARY 20-29 EXECUTIVE BOARD MEETING. THIS ACTION IS REQUIRED TO FORESTALL AUTOMATIC EXECUTIVE BOARD ACCEPTANCE OF THE CP. THE U.S. GOVERNMENT WITHHELD ITS \$34 MILLION FY 2002 CONTRIBUTION TO UNFPA BECAUSE THE SECRETARY OF STATE DETERMINED, AFTER EXTENSIVE
CONFIDENTIAL

PAGE 03 STATE 262313 200448Z
INVESTIGATION BY THE DEPARTMENT OF STATE AND AN

INDEPENDENT INVESTIGATIVE TEAM, THAT UNFPA'S FOURTH CP WAS IN VIOLATION OF THE KEMP-KASTEN AMENDMENT, A PROVISION OF THE FY 2002 FOREIGN OPERATIONS APPROPRIATIONS ACT, WHICH HAS BEEN INCLUDED IN EVERY FOREIGN OPERATIONS ACT SINCE 1985. THIS PROVISION PROHIBITS FUNDING TO ANY ORGANIZATION OR PROGRAM "WHICH SUPPORTS OR PARTICIPATES IN THE MANAGEMENT OF A PROGRAM OF COERCIVE ABORTION OR INVOLUNTARY STERILIZATION." THE PROPOSED FIFTH CP APPEARS TO BE VIRTUALLY IDENTICAL TO THE CURRENT PROGRAM AND SHOULD IT BE ADOPTED, THE U.S. WOULD BE LEGALLY UNABLE TO PROVIDE FUNDING TO UNFPA. THE U.S. HAS BEEN WORKING WITH THE CHINESE GOVERNMENT AND UNFPA TO LIFT THE COERCIVE ASPECTS OF CHINA'S FAMILY PLANNING POLICY IN THE COUNTIES WHERE UNFPA WOULD IMPLEMENT THE PROGRAM. NEGOTIATIONS ARE PROCEEDING, BUT WILL NOT LIKELY REACH A SATISFACTORY CONCLUSION BY JANUARY 20. WE WOULD NEED TO AVOID AN AUTOMATIC APPROVAL OF UNFPA'S FIFTH CP FOR CHINA, WHICH WOULD RESULT IN UNFPA OPERATING IN COUNTIES HAVING COERCIVE BIRTH LIMITATION LAWS AND POLICIES. THIS WOULD PREVENT USG FUNDING TO UNFPA PROGRAMS WORLDWIDE DURING THE THREE-YEAR LIFE OF THE CHINA PROGRAM. END SUMMARY.

BACKGROUND

3. (C) IN THE WAKE OF ALLEGATIONS THAT UNFPA'S CHINA

UNCLASSIFIED

PROGRAM PARTICIPATED IN COERCIVE ENFORCEMENT OF BIRTH
LIMITATION RULES, THE SECRETARY SENT A THREE-MEMBER
CONFIDENTIAL

UNCLASSIFIED

PAGE 04 STATE 262313 200448Z
INDEPENDENT TEAM TO CHINA IN MAY 2002 TO INVESTIGATE THE
CHARGES. THE TEAM FOUND THAT CHINA'S BIRTH PLANNING
PROGRAM HAD "COERCIVE ELEMENTS IN LAW AND PRACTICE." IT
ALSO FOUND THAT UNFPA SUPPORTED THE COERCIVE BIRTH
PLANNING LAWS THROUGH ITS PROGRAM INCLUDING BY ITS
PROVISION OF FUNDS AND EQUIPMENT TO THE CHINESE
GOVERNMENTAL ENTITIES RESPONSIBLE FOR ENFORCING THE BIRTH
LIMITATION PROGRAM. THE SECRETARY DETERMINED, ON JULY 21,
THAT UNFPA'S FOURTH CP THUS CONSTITUTES "SUPPORT OR
PARTICIPATION IN THE MANAGEMENT OF" CHINA'S COERCIVE
PROGRAM. SINCE JULY, THE ADMINISTRATION HAS ENGAGED IN
NUMEROUS TALKS WITH UNFPA AND CHINESE GOVERNMENT OFFICIALS
IN NEW YORK, WASHINGTON, AND BEIJING IN AN EFFORT TO GET
BOTH PARTIES TO MODIFY THE PROGRAM IN A MANNER CONSISTENT
WITH KEMP-KASTEN CONSTRAINTS.

4. (U) IN DISCUSSIONS WITH U.S. OFFICIALS AND IN THE
PRESENCE OF THE UNFPA COUNTRY REPRESENTATIVE, SENIOR
OFFICIALS IN CHINA'S STATE FAMILY PLANNING COMMISSION
(SFPC) CONCEDE THAT ITS BIRTH PLANNING PROGRAM STILL

CONTAINS COERCIVE PRACTICES TO ENFORCE THE "ONE-CHILD
POLICY" WHICH LIMITS THE NUMBER OF CHILDREN COUPLES MAY
HAVE AND REQUIRES COUPLES TO SEEK PERMISSION TO HAVE A
CHILD. AMONG THE COERCIVE PRACTICES ARE TARGETS AND
QUOTAS THAT DETERMINE TOTAL NUMBER OF BIRTHS IN ANY GIVEN
AREA IN A GIVEN TIME SPAN AND THE IMPOSITION OF SEVERE
"SOCIAL COMPENSATION FEES" FOR HAVING AN "OUT-OF-PLAN"
CHILD. THESE "FEES" BECAME PART OF A NEW BIRTH PLANNING
LAW EFFECTIVE SEPTEMBER 1, 2002. BOTH MEASURES ARE
COERCIVE IN NATURE AND COULD LEAD TO INVOLUNTARY
CONFIDENTIAL

PAGE 05 STATE 262313 200448Z
ABORTIONS.

5. (U) THESE POLICIES RAISE HUMAN RIGHTS CONCERNS. THEY
ALSO GO COUNTER TO THE PRINCIPLES ESPOUSED IN THE PROGRAM
OF ACTION (POA) OF THE INTERNATIONAL CONFERENCE ON
POPULATION AND DEVELOPMENT (ICPD), HELD IN CAIRO IN 1994.
CHINA JOINED CONSENSUS ON THE POA.

6. (U) UNFPA, CHARGED WITH ASSISTING NATIONS IN
IMPLEMENTING THE RECOMMENDATIONS IN THE POA, NEGOTIATED AN
AGREEMENT WITH THE CHINESE GOVERNMENT THAT WOULD ALLOW ITS

UNCLASSIFIED

UNCLASSIFIED

FOURTH CP TO BE IMPLEMENTED IN 32 COUNTIES WITHOUT TARGETS AND QUOTAS. THIS WAS A POSITIVE STEP. UNFPA HAS EXPRESSED ITS CONCERN REGARDING THE SOCIAL COMPENSATION FEES. THE FEES, AS WELL AS OTHER PARTS OF THE PROGRAM, INCLUDING ITS OPERATIONAL APPROACH, PUT POTENTIAL FUTURE U.S. FUNDING AT RISK

7. (U) THE ADMINISTRATION IS COMMITTED TO PROMOTING REPRODUCTIVE HEALTH WORLDWIDE. THE U.S. PROVIDED NEARLY \$450 MILLION IN FY 2002 TO USAID FOR ITS INTERNATIONAL MATERNAL HEALTH AND FAMILY PLANNING PROGRAMS. IT BELIEVES THAT THE WORK UNFPA DOES IN SOME 140 DEVELOPING COUNTRIES COMPLEMENTS AND STRENGTHENS OURS.

8. (C) ON NOVEMBER 2, A STATE DEPARTMENT TEAM TRAVELED TO BEIJING, AT THE INVITATION OF THE CHINESE GOVERNMENT, TO ENGAGE IN FURTHER DISCUSSIONS. MEETINGS WITH CHINESE GOVERNMENT OFFICIALS WERE CORDIAL AND FOSTERED A BETTER UNDERSTANDING OF EACH SIDE'S LEGAL CONSTRAINTS. THE U.S. PROPOSED THAT UNFPA OPERATE IN COUNTIES IN WHICH ALL
CONFIDENTIAL

PAGE 06 STATE 262313 200448Z
ASPECTS OF COERCION REGARDING THE DECISION BY COUPLES AS TO THEIR FAMILY SIZE WOULD BE ELIMINATED. THE CHINESE APPEARED INTERESTED IN CONSIDERING, FOR EXAMPLE, ELIMINATING THE NEW "SOCIAL COMPENSATION FEES" IN A FEW COUNTIES WHERE UNFPA'S FIFTH CP WOULD BE IMPLEMENTED. WE SEEK A PROGRAM IN WHICH UNFPA WOULD OPERATE IN "SAFE HAVEN" COUNTRIES. A FIRM RESPONSE TO THE PROPOSAL WAS NOT

GIVEN DUE TO THE POLITICALLY SENSITIVE NATURE OF SUCH A POLICY CHANGE. AS OF DECEMBER 19, THE CHINESE INTERLOCUTORS HAD NOT GIVEN A DECISION.

NEXT STEPS

9. (C) NEGOTIATIONS WILL CONTINUE, BUT IT IS UNLIKELY THAT A SATISFACTORY SOLUTION WILL BE FOUND BEFORE THE JANUARY 20-29 EXECUTIVE BOARD MEETING. IT IS ESSENTIAL THAT THE UNFPA CP FOR CHINA NOT BE AUTOMATICALLY. PER THE RULES OF THE EXECUTIVE BOARD, IF FIVE EXECUTIVE BOARD MEMBERS NOTIFY THE UNDP/UNFPA EXECUTIVE BOARD "SECRETARIAT IN WRITING THAT THEY WISH TO BRING THE CHINA PROGRAM BEFORE THE EXECUTIVE BOARD" (EXECUTIVE BOARD DECISION DP/2001/11, OP 7(E)), AUTOMATIC ACCEPTANCE WILL BE STAVED OFF. THIS BOARD ACTION MIGHT PROVIDE AN OPPORTUNITY FOR EITHER POSTPONING THE CHINA CP IN ITS PRESENT FORM OR AMENDING IT.

UNCLASSIFIED

UNCLASSIFIED

10. (C) DEPARTMENT SEEKS YOUR ASSISTANCE IN RECRUITING A MINIMUM OF FOUR LIKE-MINDED EXECUTIVE BOARD MEMBERS TO INTERCEDE WITH THE EXECUTIVE BOARD SECRETARIAT. WE HAVE
- CONFIDENTIAL

PAGE 07 STATE 262313 200448Z
IDENTIFIED FIVE COUNTRIES THAT ENTERED RESERVATIONS WHEN JOINING CONSENSUS ON THE POA/ICPD.

-- DELEGATIONS OF EL SALVADOR, HONDURAS, AND ECUADOR ENTERED RESERVATIONS TO SUCH TERMS AS "REPRODUCTIVE HEALTH," AND "REPRODUCTIVE RIGHTS," EMPHASIZING THAT THEY SHOULD NEVER INCLUDE ABORTION AS A SERVICE OR AS A METHOD OF REGULATING FERTILITY.

-- PERU ENTERED A RESERVATION SAYING THAT ABORTION IS A PUBLIC HEALTH PROBLEM TO BE TACKLED BY EDUCATION AND FAMILY PLANNING.

-- DJIBOUTI'S RESERVATION FOCUSED ON CONFLICT BETWEEN PASSAGES IN THE POA AND THE PRINCIPLES OF ISLAM, WHICH HOLD THAT ABORTION, EXCEPT TO SAVE THE MOTHER'S LIFE, IS NOT PERMITTED.

11. (C) ALTHOUGH THE PHILIPPINES, SPAIN AND GABON DID NOT MAKE RESERVATIONS TO THE POA, WE BELIEVE THAT THESE COUNTRIES MIGHT BE WILLING TO HELP REACH A SOLUTION THAT WOULD HELP ELIMINATE COERCION IN CHINA AND POSSIBLY RESTORE U.S. FUNDING TO UNFPA.

12. (C) THE UK HAS OFTEN EXPRESSED SERIOUS CONCERN ABOUT CHINA'S FAMILY PLANNING PROGRAM AS AN ABUSE OF HUMAN RIGHTS. ALTHOUGH AN INVESTIGATIVE TEAM FROM THE UK DID NOT FIND THAT THE UNFPA PROGRAM WAS INVOLVED IN COERCIVE PRACTICES, IT FOUND THAT THERE WERE COERCIVE ELEMENTS IN LAW AND POLICY IN THE CHINESE BIRTH LIMITATION LAWS. WE UNDERSTAND THAT IN THE WAKE OF THE U.S. TEAM'S
- CONFIDENTIAL

PAGE 08 STATE 262313 200448Z
INVESTIGATION, FOLLOWED BY THE PUBLICATION OF THE U.S. LEGAL ANALYSIS, THE UK MAY HAVE RE-EVALUATED ITS OPINION OF UNFPA ACTIVITIES IN CHINA. FOR EXAMPLE, ITS DELEGATION TO THE UNDP/UNFPA EXECUTIVE BOARD MEETING IN SEPTEMBER 2002 STATED THAT THE "SOCIAL COMPENSATION FEES" WERE UNACCEPTABLE.

13. (U) DEPARTMENT HAS PROVIDED GENERAL TALKING POINTS AS WELL AS SPECIFIC ONES TO BE USED AS INDICATED. ALL GOVERNMENTS INTERLOCUTORS WE APPROACH SHOULD BE ASKED TO

UNCLASSIFIED

NOTIFY THE UNDP/UNFPA EXECUTIVE BOARD SECRETARIAT AS SOON AS POSSIBLE THAT THEY WISH TO DISCUSS THE CHINA PROGRAM AT THE JANUARY 20, 2003 EXECUTIVE BOARD MEETING. UNCLASSIFIED

-- THE U.S. GOVERNMENT WITHHELD ITS FY 2002 PLEDGE OF \$34 MILLION TO THE UN POPULATION FUND (UNFPA), BECAUSE THE SECRETARY OF STATE DETERMINED ITS PROGRAM IN CHINA CONSTITUTED SUPPORT OF OR PARTICIPATION IN THE MANAGEMENT OF A PROGRAM OF COERCIVE ABORTION RESULTING FROM CHINA'S BIRTH LIMITATION POLICIES AND PRACTICES.

-- OUR LAW STATES THAT WE CANNOT FUND AN ORGANIZATION OR PROGRAM THAT SUPPORTS OR PARTICIPATES IN THE MANAGEMENT OF A PROGRAM OF COERCIVE ABORTION OR INVOLUNTARY STERILIZATION.

-- RESOLVING THIS PROBLEM COULD PERMIT THE U.S. TO RESUME FUNDING WORTHY UNFPA PROGRAMS IN SOME OF THE NEEDIEST COUNTRIES AROUND THE GLOBE.

-- CHINA'S FAMILY PLANNING POLICIES ARE NEITHER IN
CONFIDENTIAL

PAGE 09 STATE 262313 200448Z
ACCORDANCE WITH HUMAN RIGHTS PRINCIPLES NOR WITH THOSE OF THE PROGRAM OF ACTION OF THE INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT (ICPD), WHICH INCLUDES THAT COUPLES SHOULD BE ABLE TO DECIDE FREELY AND RESPONSIBLY THE NUMBER, SPACING AND TIMING OF THEIR CHILDREN (PARA 7.3).

-- MANY GOVERNMENTS HAVE PROTESTED THE COERCIVE ELEMENTS OF THE CHINESE POLICY, SUCH AS QUOTAS AND TARGETS AND

SEVERE "SOCIAL COMPENSATION FEES" THAT FORCE ESPECIALLY POOR WOMEN TO UNDERGO ABORTIONS.

-- UNFPA CONTRIBUTED FUNDS AND EQUIPMENT TO THE CHINESE GOVERNMENTAL ENTITIES RESPONSIBLE FOR ENFORCING THE COERCIVE PROGRAM. THIS WAS FOUND TO CONSTITUTE SUPPORT OR PARTICIPATION IN THE MANAGEMENT OF A PROGRAM OF COERCIVE ABORTION.

-- THE PRESIDENT IS COMMITTED TO PROMOTING REPRODUCTIVE HEALTH, BILATERALLY AND MULTILATERALLY. FOR THE U.S. TO BE ABLE TO FUND UNFPA, THE PROGRAM IN CHINA MUST BE CONDUCTED IN A COERCION-FREE CLIMATE.

-- WE HAVE HAD MANY DISCUSSIONS WITH UNFPA AND THE CHINESE GOVERNMENT TO RESOLVE THE PROBLEM, BUT PROGRESS, ALTHOUGH

UNCLASSIFIED

PROMISING, IS SLOW.

UNCLASSIFIED

-- WE ARE CONCERNED THAT THE PROBLEM WILL NOT BE RESOLVED BY THE JANUARY 20 UNDP/UNFPA EXECUTIVE BOARD MEETING.

CONFIDENTIAL

PAGE 10 STATE 262313 200448Z

-- UNFPA'S FIFTH COUNTRY PROGRAM FOR CHINA (2003-2005) WILL BE ON THE AGENDA. THIS PROGRAM IS VIRTUALLY UNCHANGED FROM THE FOURTH COUNTRY PROGRAM THAT WAS DETERMINED TO RUN AFOUL OF U.S. STATUTORY REQUIREMENTS.

-- UNLESS FIVE COUNTRIES STEP FORWARD AND NOTIFY THE EXECUTIVE BOARD SECRETARIAT IN WRITING THAT THEY WISH TO BRING THE CHINA PROGRAM BEFORE THE JANUARY EXECUTIVE BOARD, THE FIFTH COUNTRY PROGRAM WILL BE AUTOMATICALLY APPROVED.

-- IN THAT CASE, THE U.S. COULD NOT FUND UNFPA'S WORLDWIDE PROGRAM FOR THE THREE-YEAR DURATION OF THE CHINA PROGRAM.

-- WE ASK YOU TO JOIN U.S. IN NOTIFYING THE EXECUTIVE BOARD SECRETARIAT TO PLACE THE CHINA PROGRAM ON THE AGENDA FOR THE JANUARY EXECUTIVE BOARD MEETING.

14. (U) FOR SAN SALVADOR, LIMA, TEGUCIGALPA, QUITO AND DJIBOUTI:

-- YOUR DELEGATIONS ENTERED RESERVATIONS TO THE 1994 PROGRAM OF ACTION (POA) OF THE INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT (ICPD).

-- THESE RESERVATIONS MADE IT CLEAR THAT ALTHOUGH YOUR COUNTRY JOINED CONSENSUS ON THE POA, YOU REJECTED THE

POSSIBILITY THAT TERMS SUCH AS REPRODUCTIVE HEALTH, FAMILY PLANNING OR REPRODUCTIVE RIGHTS COULD INCLUDE ABORTION TO CONTROL FERTILITY OR REGULATE THE POPULATION.

CONFIDENTIAL

PAGE 11 STATE 262313 200448Z

-- CHINA'S COERCIVE PRACTICES INCLUDE INVOLUNTARY ABORTION TO CONTROL FERTILITY AND REGULATE THE POPULATION. UNFPA'S FIFTH COUNTRY PROGRAM, IF NOT CHANGED, WOULD PROVIDE SUPPORT TO THE CHINESE GOVERNMENT'S MANAGEMENT OF THAT POLICY.

-- WE SHOULD NOT ALLOW UNFPA'S GOOD REPUTATION TO BE

UNCLASSIFIED

TAINTED BY SUCH INVOLVEMENT.

UNCLASSIFIED

15. (U) FOR MADRID, MANILA, AND LIBREVILLE:

-- WE WOULD VERY MUCH APPRECIATE YOUR ASSISTANCE IN FORGING CHANGE IN THE WAY UNFPA'S PROGRAM IN CHINA IS USED TO PROMOTE A FAMILY PLANNING PROGRAM THAT INCLUDES COERCIVE PRACTICES, INCLUDING INVOLUNTARY ABORTION, TO REGULATE THE POPULATION.

-- WE BELIEVE THAT UNFPA IS RESPONSIBLE TO ALL MEMBER STATES FOR CONDUCTING ITS PROGRAMS IN A COERCIVE-FREE CLIMATE THAT ALLOWS COUPLES TO DECIDE FREELY AND RESPONSIBLY THE NUMBER AND SPACING OF THEIR CHILDREN.

-- THE INTRINSIC COERCIVE NATURE OF THE FAMILY PLANNING CLIMATE IN CHINA CANNOT HELP BUT BE DETRIMENTAL TO UNFPA'S REPUTATION.

16. (U) FOR LONDON:

-- LIKE YOU, WE HAVE ON NUMEROUS OCCASIONS EXPRESSED OUR HUMAN RIGHTS CONCERNS REGARDING CHINA'S FAMILY PLANNING
CONFIDENTIAL

PAGE 12 STATE 262313 200448Z
PROGRAM.

-- AND LIKE YOU, WE BELIEVED THAT UNFPA'S PRESENCE HAS HAD A POSITIVE, IF SLOW AND INCOMPLETE, EFFECT ON CHINA'S FAMILY PLANNING POLICIES.

-- IN RETROSPECT AND IN VIEW OF OUR CONCERNS, UNFPA EXECUTIVE BOARD MEMBERS SHOULD HAVE ASSUMED A MORE ENGAGED ROLE IN ENSURING THAT RIGOROUS OVERSIGHT WAS IN PLACE.

-- UNFPA HAS A RESPONSIBILITY TO ALL MEMBER STATES. THE CHINA PROGRAM IN ITS PRESENT FORM HAS PROVEN TO BE AN OBSTACLE TO ITS ACQUIRING THE LEVEL OF FUNDING NEEDED TO

RESPOND EFFECTIVELY TO THE DIRE REPRODUCTIVE HEALTH NEEDS IN THE DEVELOPING WORLD, INCLUDING CHINA.

-- WE WOULD VERY MUCH APPRECIATE YOUR COOPERATION IN TRYING TO RECTIFY THIS BY HAVING A CONSTRUCTIVE DISCUSSION DURING THE JANUARY UNDP/UNFPA EXECUTIVE BOARD SESSION THAT WOULD FOCUS ON CREATING A COERCION-FREE CLIMATE IN CHINA IN WHICH UNFPA COULD IMPLEMENT THE PROGRAM.

-- JOINING US IN NOTIFYING THE UNDP/UNFPA EXECUTIVE BOARD

UNCLASSIFIED

SECRETARIAT IN WRITING THAT YOU WISH TO DISCUSS THE CHINA PROGRAM WOULD GIVE US THAT OPPORTUNITY.

17. (U) THE U.S. MISSION IS REQUESTED TO USE RELEVANT TALKING POINTS WITH ITS COUNTERPARTS IN THE MISSIONS MENTIONED IN PARAS 10-12.
POWELL

UNCLASSIFIED

CONFIDENTIAL

PAGE 13 STATE 262313 200448Z

CONFIDENTIAL

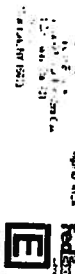
<< END OF DOCUMENT >>

UNCLASSIFIED

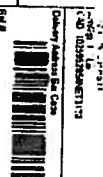
Freedom of Information Act Request
Expedited Processing and Fee Waiver/Reduction Request
Case Control No. 200807436

Our File No. 10-190-1

Page 1 of 2



See To: govt-sa-2
Program and Services
Office of Information
A/ISS/IPS
Department of State, SA-2
Washington, DC 20522



Ref #
Track #
FC #
Date #

7988 1345 8770

THU - 03 MAR A2
EXPRESS SAVER

SA AUKA

20522
DCA



01345-0510

For

Divert to Joe

Press Here. Press Here. Press Here. Press Here. Press Here. Press Here. Press Here. Press Here. Press Here. Press Here.

this pouch is resealable.

**Shipment Receipt
Address Information**

Ship to:	Ship from:
Program and Services	Theodore Cox Esquire
Office of Information	The Law Office of Theodore Cox
A/ISS/IPS	401 Broadway, Ste. 701
Department of State, SA-2	Suite 701
Washington, DC	New York, NY
20522	10013
US	US
202-261-8484	2129251208

Shipping Information

Tracking number: 796813458770
Ship date: 02/28/2011
Estimated shipping charges:

Package Information

Service type: FedEx Express Saver
Package type: FedEx Envelope
Number of packages: 1
Total weight: 1LBS
Declared value: 0.00USD
Special Services:
Pickup/Drop-off: Use an already scheduled pickup at my location

Billing Information

Bill transportation to: myaccount-684
Your reference:
P.O. no.:
Invoice no.:
Department no.:

Thank you for shipping online with FedEx ShipManager at fedex.com.

Please Note

FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits. Consult the applicable FedEx Service Guide for details. The estimated shipping charge may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable FedEx Service Guide or the FedEx Rate Sheets for details on how shipping charges are calculated.

LAW OFFICE OF THEODORE N. COX, ESQ.

*Attorneys-at-law
401 Broadway, Suite 701
New York, New York 10013*

Telephone: (212) 925-1208
Facsimile: (212) 925-5188
E-mail: tedcoxecf@gmail.com

December 1, 2008

Office of Information Program and Services
A/ISS/IPS
Department of State, SA-2
Washington, DC 20522-8001

**Re: Freedom of Information Act Request
Expedited Processing and Fee Waiver/Reduction Requested**

Dear Officer:

This request is made pursuant to the Freedom of Information Act ("FOIA"), codified at 5 U.S.C. §552. The FOIA statute "calls for broad disclosure of Government records." *U.S. Dep't of Justice v. Julian*, 486 U.S. 1, 8 (1988) (internal quotation marks omitted). The Department of State implements the FOIA statute in Title 22 Code of Federal Regulations (CFR), part 171.

Identification of Documents

The requested documents include all records (as defined in 22 C.F.R. §171.11(e)) relied upon by the Department of State to support each and every statement of fact, speculation, allegation, observation, and/or conclusion made in the following reports:

- 1) Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State,
China: Profile of Asylum Claims and Country Conditions (Apr. 1998)
(hereinafter "1998 Profile").

- 2) Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State,
China: Profile of Asylum Claims and Country Conditions (Jun. 2004)
(hereinafter "2004 Profile").
- 3) Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State,
China: Profile of Asylum Claims and Country Conditions (Oct. 2005)
(hereinafter "2005 Profile").
- 4) Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State,
China: Profile of Asylum Claims and Country Conditions (May 2007)
(hereinafter "2007 Profile").
- 5) Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State,
China Country Reports on Human Rights Practices – 2006 (Mar. 2007)
(hereinafter "2006 Country Reports").

Please note that the present request concerns the records that the Department of State used in preparing the above *Profiles* and *Country Reports*; it is NOT a request of the *Profiles* and *Country Reports* themselves.

Scope of Request

The present request focuses on the sections of the *Profiles* and *Country Reports* relating to China's population control policy (also referred to as family planning policy). Specifically, the requested records include, but are not limited to, the following:

- A record containing the identity and country-specific credentials of all of the authors contributing to the *Profiles* and *Country Reports*;
- Any written or otherwise recorded attestation or affirmation by such contributing authors concerning the veracity, accuracy, objectivity, neutrality and/or the source of their statements of facts and/or opinions;

- All correspondence, notes, or reports regarding communication between United States government personnel and Chinese authorities cited in the China Profile (e.g., p. 30 of the *2007 Profile*: “National Population and Family Planning Commission officials told U.S. Embassy officials in July 2005 that, in accordance with an unpublished 2002 national-level “Regulation on Issues Concerning Births by Students when Overseas. . .” and “As to Fujian Province, in response to an inquiry by the U.S. Consulate General in Guangzhou. . .”);
- All reports and field investigations cited by, or used in compiling the China Profile (see, e.g., p. 24 of the *2007 Profile*: “U.S. diplomats in China have heard reports that local officials occasionally employ illegal means. . .”);
- Copies of all laws and regulations cited by the China Profile, in the original Chinese language, including the laws and regulations as appeared in Appendix A and Appendix B of the *2007 Profile*, as well as any documentation regarding the identity and qualifications of the translator(s) used by the Department of State;
- All correspondence, reports, and documentation associated with Appendix C of the *2007 Profile*, including the original (untranslated) letter from the Fujian Province Population and Family Planning Commission, and the initial inquiry from the U.S. government;
- A record of the names and credentials of the American diplomats who stated that they were unaware of “any cases in which returnees from the United States were forced to undergo sterilization procedures on their return” as reported in the *2005 Profile*;
- Records or documentation of any and all investigation team sent to China since 2000 for purposes of investigating China’s family planning policy, e.g. an investigation team was sent to China in May 2002 under the direction of the former Secretary of State Colin Powell.

Expedited Processing Request

Expedited processing is warranted because the requested information is needed urgently. 22 C.F.R. §171.12(b). Requested information directly pertains to published decisions issued by the Board of Immigration Appeals (“BIA”), including but not limited to *Matter of J-W-S-*, 24 I&N Dec. 185 (BIA 2007), in which the BIA denied asylum claims filed by Chinese asylum applicants who have a genuine fear of persecution by the Chinese government. Because of this line of administrative decisions, a large class of

asylum seekers is facing imminent danger of being removed to a country in which they fear persecution. Therefore, the present FOIA request should be processed expeditiously. In any event, the FOIA request should be processed within 20 days. 8 C.F.R. §171.12(d).

Fee Waiver/Reduction Request

It is further requested that any fees be waived or reduced “because [the requested documents are] likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.” 22 C.F.R. §171.17(a). As stated above, the requested documents will shed light on the accuracy of the statements made in the Department of State’s country reports and asylum profiles, which directly affects a large class of asylum seekers facing imminent removal. In the event that said fee waiver/reduction request is not granted, requester is willing to pay any applicable fees. 22 C.F.R. §171.14.

Format Requested

Whenever feasible, it is requested that the documents be provided in CD-ROM format. 22 C.F.R. §171.12(f) (“The Department shall provide requested records in any form or format sought by the requester if the record is readily reproducible in that form or format through reasonable efforts.”).

Sincerely yours,

Theodore N. Cox

Theodore N. Cox, Esq.
Law Office of Theodore N. Cox
401 Broadway, Suite 701
New York, NY 10013
Tel.: (212) 925-1208
Fax : (212) 624-0232
tedcoxecf@gmail.com

Chairman
Appeals Review Panel
C/O Appeals Officer
A/ISS/IPS/PP/LC
U.S. Department of State
SA-2, Room 8100
Washington, D.C. 20522-8100

Dated: March 18, 2011

RE: Freedom of Information Act Appeal
Case Control No. 200807436

Our File No. 10-190-1

Dear FOIA Officer:

This Freedom of Information Act ("FOIA") Appeal amends a previous appeal, case control no. 200807436, regarding the FOIA response received to a request for documents used in formulating the Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, Country Profiles on China ("China Country Profiles"). This appeal serves to narrow and specify the documents requested in the appeal notice dated February 18, 2011.

The initial FOIA request regarded any or all documents used in putting together the China Country Profiles, including, but not limited to, investigations undertaken and records and documents reviewed when analyzing and assessing the implementation of family planning policy in China, the sources, including people and documents, used when gathering such information, the method through which the investigations were

undertaken, who in fact undertook such investigations and research, and how documents and records were translated from Chinese to English.

Two responses to this request were received. These documents did not provide information regarding specific findings in the China Country Profiles, which is why believe that there are additional records responsive to our initial request made that were not located and/or were not sent to us.

In order to assist in finding these records, this amended appeal specifically cites to the findings in specific China Country Profiles for which the initial FOIA response did not provide a factual basis for, and that we therefore again request the documentation and records that serve as a basis for these findings:

2005 China Country Profile:

- American diplomats in China are unaware of “any cases in which returnees from the United States were forced to undergo sterilization procedures on their return.”

2006 China Country Profile:

- “[s]enior officials stated repeatedly that the Government ‘made it a principle to ban coercion at any level’ and the SFPC [State Family Planning Commission] has issued circulars nationwide prohibiting birth planning officials from coercing women to undergo abortions or sterilization against their will.”
- Physical coercion is specifically condemned.

2007 China Country Profile:

- “In 2003, officials in one province who tried to force a woman to be sterilized were reprimanded after she complained to national family planning officials and insisted on her right under the law to choose her method of birth control. She subsequent chose an IUD.”
- “The U.S. Embassy and Consulates General are unaware of any so-called “abortion certificates,”.

- “According to the Fujian Provincial Birth Planning Committee (FPBPC), there have been no cases of forced abortion or sterilization in Fujian Province in the last 10 years...
- The FPBPC acknowledges that during the 1980s and early 1990s there were isolated cases of forced abortion and sterilization. Since that time, the FPBPC asserts that it has insisted that all men and women who undergo surgical procedures provide informed, written consent before surgery.
- Local physicians in contact with the U.S. Consulate General in Guangzhou report that they have not seen signs of forced abortions or sterilizations among their patients from Fujian and Guangdong Provinces since the 1980s.”
- “... a hospital director in Changle, Fujian, stated that the hospital would take “measures” (unspecified) to induce some patients to undergo abortions in the name of compliance with the birth planning law. Consulate General officials visiting Fujian have found that coercion through public and other pressure has been used, but they did not find any cases of physical force employed in connection with abortion or sterilization. In interviews with visa applicants from Fujian, representing a wide cross-section of society. Consular General officers have found that many violators of the one-child policy paid fines but found no evidence of forced abortion or property confiscation.”
- Enforcement efforts in Fujian Province of family planning policies is “uneven.”

Expedited Processing Request

Expedited processing is warranted because the requested information is needed urgently. 2 C.F.R §171.12(b). Requested information directly pertains to published decisions by the Board of Immigration Appeals (“BIA”), including but not limited to *Matter of J-W-S-*, 24 I&N Dec. 185 (BIA 2007), in which the BIA denied an asylum claim filed by a Chinese asylum applicant who have a genuine fear of persecution by the Chinese government, on the ground that there was not evidence of coercive enforcement of the family planning policy in China. The BIA’s decision cited repeatedly to Department of State China Country Profiles for the basis of its findings. Therefore, this evidence goes directly to this claim. Because of this line of administrative decisions, a large class of asylum seekers are facing imminent danger of being removed to a country

in which they fear persecution. Therefore, the present FOIA request should be processed expeditiously. In any event, the FOIA request should be processed within 20 days. 8 C.F.R. §171.12(d).

Since the FOIA response received failed to provide the records requested, and there is strong reason to believe that further records and documentation exist, the FOIA request should be remanded.

It is also requested that your office render a decision within 20 business days pursuant to 5 U.S.C. §552(a)(6)(A)(ii). Thank you for your prompt attention to this matter.

Sincerely yours,

Theodore N. Cox

AFFIDAVIT

STATE OF NEW YORK

}

ss.:


COUNTY OF NEW YORK

}

Theodore N. Cox, an attorney duly admitted before the bar of the courts of the State of New York and this Court, hereby affirms under penalties of perjury:

1. I submitted the following Freedom of Information Act Request on December 1, 2008 to the Office of Information Program and Services at the US Department of State with a cover letter dated December 1, 2008 (See Attached Exhibit A). I did not save a copy of the cover letter with my signature. I am writing this affidavit to confirm that Exhibit A, dated December 1, 2008 is an exact copy of the cover letter that I submitted to the US Department of State with my Freedom of Information Act Request.
2. I also submitted the following Freedom of Information Act Appeal, Case Control No. 200807436, with a cover letter dated March 18, 2011 (See Attached Exhibit E). I did save a copy of the cover letter with my signature. I am writing this affidavit to confirm that Exhibit E, dated March 18, 2011 is an exact copy of the cover letter I submitted to the US Department of State with my Freedom of Information Act Appeal.

Dated: August 22, 2011
New York, New York


Theodore N. Cox